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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 4808 of 2006

Date of decision: 18.10.2007

Monica Electronics Limited and others **...Petitioners**

Versus

M/s R.V.A. Associates and others **...Respondents**

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Rajesh Garg, Advocate for the petitioners.

Mr. P.S.Rana, Advocate for respondent No.1.

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RAJESH BINDAL, J.

The challenge in the present petition is to the order dated April 29, 2006 passed by learned Civil Judge (Junior Division), Karnal whereby application filed by the petitioners under Section 8 of the Arbitration and Conciliation Act, 1996 (for short 'the Act") was dismissed.

Learned counsel for the petitioners submitted that respondent No. 1 filed suit against Monica Electronics Limited for rendition of accounts. The same was on the basis of agreement entered into between the respondent no.1 and Monica Electronics Limited. There being an arbitration clause in the agreement for reference of the dispute arising out of the agreement to the sole Arbitrator of the Managing Director of the petitioners, the matter was required to be referred to the Arbitrator and the rejection of the application by the learned trial Court was totally illegal and arbitrary. He further submitted that even on perusal of allegations made in the plaint, it is evident that relief was claimed only against Monica Electronics Limited and none else. Accordingly, even if petitioners No. 4 and 5 have been impleaded in the suit, it has no effect on the arbitration agreement.

On the other hand, learned counsel for respondent No.1 submitted that respondent no.1/plaintiff filed suit only against Monica

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Electronics Limited as the agreement was entered between him and Monica Electronics Limited. However, in an application filed under Order 7 Rules 10 & 11 of the Code of Civil Procedure (for short "the Code") for return of plaint, it was the petitioners, who had pleaded that present petitioners No. 4 and 5 are also necessary parties in the suit and it was only for that reason that application was filed by respondent no.1/plaintiff for impleading the present petitioners No. 4 and 5 as defendants in the suit, which order has attained finality. He further submitted that the petitioners cannot be permitted to blow hot and cold at the same breath. When in the earlier application filed by them the claim was that present petitioners No. 4 and 5 were also necessary parties in the suit, now they cannot be permitted to state that the dispute is only between Monica Electronics Limited and the respondent and the same being covered by agreement between the parties, the matter was required to be referred to the Arbitrator. Admittedly, there is no agreement between respondent no.1/plaintiff and petitioners no. 4 and 5 on the basis of which the matter could be referred for arbitration. He further submitted that much water has flown ever since application filed by the petitioners was dismissed as now after filing of the written statement by the petitioners the cross examination of the witnesses produced by respondent no. 1/plaintiff is going on and in such a situation, it would not be in the fitness of things to refer the matter for arbitration at this stage.

Having heard learned counsel for the parties and perusing the record, I find merit in the contentions raised by learned counsel for respondent no.1/plaintiff.

Admittedly, agreement, on the basis of which initial suit was filed, is between respondent no. 1/plaintiff and Monica Electronics Limited. However, it was on the objection raised by petitioners only that other two defendants, namely, petitioners no. 4 and 5 were impleaded as parties in the suit and there is no agreement on record to show any arbitration clause between respondent no.1/plaintiff and present petitioners no. 4 and 5/defendants no. 6 and 7 in the suit. Meaning thereby the entire controversy in the suit between all the parties to the suit is not covered by the arbitration

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clause. Even otherwise the petitioners cannot be permitted to raise contradictory pleas at different stage of suit as it suited them at the relevant stage. Still further there is weight in the contention raised by learned counsel for respondent no.1/plaintiff to the effect that the suit now having been proceeded further after the disposal of the application vide impugned order and the same being at the stage of the cross examination of the witnesses produced by respondent no.1/plaintiff, it would not be appropriate to start the proceedings afresh before the Arbitrator as suit is quite old having been filed in 2003.

Accordingly, I do not find any merit in the present petition and the same is dismissed.

October 18, 2007 **(Rajesh Bindal)**
Pka **Judge**